

Completion Assurance Agreement

U.S. Department of Housing
and Urban Development
Office of Housing

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This Agreement made this _____ day of _____, 20____, by and between _____, Contractor, having an office at _____, and _____, Borrower (which term also shall be deemed to have the meaning set forth in the HUD regulatory agreement applicable to this transaction), having an office at _____, and _____, Lender (which term also shall be deemed to have the meaning set forth in the HUD regulatory agreement applicable to this transaction), having an office at _____.

WITNESSETH:

WHEREAS, the Contractor and the Borrower have entered into a Construction Contract dated _____, 20____ (the Construction Contract), providing for the construction of a housing project described in the Construction Contract, said project being known as Project No. _____, and a copy of the Construction Contract being on file with the Department of Housing and Urban Development (HUD); and

WHEREAS, the construction of the Project is to be financed by a mortgage loan made to Borrower by the Lender, which loan is secured by a mortgage/deed of trust (hereinafter called the mortgage), to be insured by the Federal Housing Commissioner (hereinafter the Commissioner), pursuant to and under the provisions of the National Housing Act, as amended; and

WHEREAS, the Lender is unwilling to make advances of mortgage proceeds and the Commissioner is unwilling to insure the

mortgage unless the Contractor shall first furnish proper assurance to the Borrower and to the Lender for the performance of the obligations of the Contractor under the Construction Contract, including, but not limited to:

- (a) the completion of the Project in accordance with drawings and specifications referred to in the Construction Contract;
- (b) the completion of the Project free and clear of any liens, claims or encumbrances whatsoever, except for the lien of the mortgage;
- (c) the payment of all mechanics and laborers employed in the construction of the Project at wages prevailing in the locality of the project as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended;
- (d) the satisfaction of any loss, damage, expense or claim which the Borrower or Lender may suffer

or sustain through the failure of the Contractor to fulfill the provisions of (a), (b), or (c) above or through the failure of the Contractor to fulfill all obligations under the Construction Contract.

NOW, THEREFORE, in consideration of the mutual promises and undertakings hereinafter contained, and for the purpose of inducing the commissioner to insure advances of mortgage money during construction, the parties hereto on behalf of themselves, their successors or assigns respectively, undertake and agree that:

1. The Contractor has deposited with the Lender, or if the Lender so elects, with a depository satisfactory to the Lender, a Completion Assurance Fund ;(hereinafter called the Fund), in the amount of

_____ Dollars (\$_____) to secure or indemnify the Borrower or Lender, as the case may be, for any expenses, loss, or damage suffered or sustained as the result of any default by the Contractor in the performance of the Construction Contract; it being understood and agreed that the Fund shall at all times be under the control of the Lender or its assigns and is deposited in the form of:

/___/ Cash; or

/___/ an unconditional irrevocable letter of credit issued to the Lender by a bank institution;

2. The Lender shall maintain such Fund as a separate trust account to be disbursed in the following order:

(a) To the Contractor or party making such deposit during the course of construction, as may be deemed necessary by the Lender and with prior

written approval of the commissioner, or his/her authorized agent.

(b) To the Borrower such portion of the Fund as deemed necessary by the Commissioner to recover any overpayment to the Contractor.

(c) To the Contractor or party making such deposit, the balance of such fund so deposited remaining upon final endorsement of the Mortgage loan for insurance by the Commissioner or his/her authorized agent; except that there shall be withheld from the payment of said balance an amount equal to two and one-half percent (2 ½ %) of the total amount of the Construction Contract, which sum is to be retained in such account for a period of fifteen (15) months from the date of completion as defined in the Construction Contract. Said sum shall be held as a fund to guarantee against defects in construction due to faulty materials or workmanship or damage to the mortgaged premises resulting from such defects, which defects or damage become apparent within one year after the date of the aforesaid completion. Said sum may be used for the correction of such defects or damage in the event the Contractor fails to make such corrections. The Contractor's liability for such corrections is not limited by the amount of such sum.

(d) To the Lender the entire Fund or balance remaining therein in the event of a default by the contractor under the Construction Contract, to be used by the Lender to indemnify it and the Borrower as the case may be, for any loss, damage or expense whatsoever which they may suffer by reasons of the Contractor's failure to properly perform the Construction Contract.

In any event, any and all disbursements from the Fund shall be made only upon the prior written approval of the Commissioner, or his/her authorized agent.

3. In the event the Lender assigns the mortgage to the Commissioner at any time during which the Fund has a balance remaining therein in the form of an unconditional irrevocable letter of credit, the Contractor authorizes the Lender to draw the remaining balance of said letter of credit in cash, if so required by the Commissioner, and deliver such cash within forty-five (45) days after the assignment is filed for record to the Commissioner to be held in accordance with the terms of this Agreement.

4. Notwithstanding any of the provisions herein contained, it is expressly understood and agreed by all the parties thereto that in the event of a default by the Contractor in any of its obligations under the Construction Contract, the entire Fund or balance remaining therein may, at the option of the Lender and the Commissioner, be paid to the Commissioner

together with an assignment of all rights hereunder granted to the Lender and the Borrower. The Contractor and Borrower hereby consent to the transfer of the rights of the Lender hereunder by assignment in case any other Lender or Lenders should become the Borrower or holder of the mortgage.

5. This Agreement shall not alter or limit the obligations and liabilities of the contractor under the Construction Contract, but shall be deemed to be merely additional security for the performance by the Contractor of the obligations thereunder.

6. It is understood and agreed that in the event the Fund is held by a depository other than the Lender, that said depository is not charged with any duty or responsibility to see to the performance of or compliance with any agreements between any of the parties hereto other than that of paying over the Fund as directed in writing by the Lender, nor to see to the application of the Fund after making disbursement as so directed.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

BORROWER

LENDER

By: _____

By: _____

Print name and title

Print name and title

CONTRACTOR**DEPOSITORY**

By: _____

By: _____

Print name and title_____
Print name and title

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Name of Entity: _____By: _____
/s/ _____By: _____
/s/ _____Name, Title: _____
(Printed)Name, Title: _____
(Printed)

Dated: _____

Dated: _____

Name of Entity: _____By: _____
/s/ _____By: _____
/s/ _____Name, Title: _____
(Printed)Name, Title: _____
(Printed)

Dated: _____

Dated: _____

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. §§ 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. § 3729; and (iii) administrative sanctions, claims, and penalties under 24 C.F.R. parts 24 and 28.